IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,

Plaintiff,

vs.

PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual,

Defendants.

CIVIL ACTION

No. 00-2041

PLAINTIFF'S CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO DAMAGES AGAINST DEFENDANT, JOHN HERKLOTZ

AND NOW comes Plaintiff, WRS, Inc. d/b/a WRS Motion Picture Laboratories, by and through its counsel, Thomas E. Reilly, P.C., and files the within Concise Statement of Material Facts:

1. As of October 13, 2006, Plaza Entertainment, Inc. owes WRS the sum of $2,581,808.57 as more fully described in an Affidavit of Jack Napor in Support of the Motion for Summary Judgment as to Damages against Defendant, John Herklotz.

2. Plaintiff and Defendant, John Herklotz, retained Schneider Downes, Inc., as forensic accountants, to determine whether the records kept in the ordinary course of business of WRS with respect to the account of Plaza Entertainment, Inc., were reasonably reliable and accurately reflected the amount owed to WRS by Plaza Entertainment, Inc.

3. On October 6, Schneider Downes, Inc. prepared and delivered to counsel a report of their examination of the business records of WRS which in summary concluded that the records demonstrated that WRS "applied a reasonable basis of accounting with

respect to its accounts receivable, revenue and cash receipts cycle surrounding the account for Plaza Entertainment, Inc. and appears to be operating within the normal course of business". A copy of the draft report is attached as Exhibit "6"(Exhibits 1 through 5 are attached to the Napor Affidavit).

5. To the best of Plaintiff's information, Defendant, Herklotz, has not obtained an opinion of a forensic accountant contrary to the opinion of that expressed by Schneider Downes, Inc., relative to the business records kept in the ordinary course of business of WRS, Inc.

6. Herklotz has not pleaded "payment" as an affirmative defense as required by F.R.C.P. 8 (c) nor has Herklotz otherwise identified any evidence to contradict the amount owed by Plaza Entertainment, Inc. as reflected on the business records kept by WRS, Inc.

7. Pursuant to the Terms and Conditions applicable to the Plaza account and attached as Exhibit "4" to the Napor Affidavit) and (previously filed of record in support of WRS's Motion for summary Judgment as to liability) Plaza Entertainment, Inc. agreed that

> "any claims that the customer may have against the company for adjustment or which in anyway would effect any invoices must be presented to the company in writing no later than 30 days from the date of the invoice in question. Customer hereby irrevocably waives any claim for adjustment or change or modification and any such invoice in which such claim is not presented in writing to the company within 30 days."

8. Herklotz cannot produce any written claim for adjustment or change presented to WRS by Plaza Entertainment, Inc. with respect to any invoice that makes up the currently unpaid debt as required by the Terms and Conditions.

9. Herklotz cannot challenge the amount of any invoice included in the current amount due.

10. Each invoice sent to Plaza Entertainment, Inc. by WRS contained the following legend as represented by the invoice attached as Exhibit “3” to the Napor Affidavit:

TERMS

> Payment due 30 days from date of invoice. Past due invoices are subject to a 1.1/2% per month interest charge which is an annual percentage charge of 18%.

11. Pursuant to the Terms and Conditions attached as Exhibit “4”, the Services Agreement, attached as Exhibit “5” (respectively attached to the Napor Affidavit and the Guaranty Agreement of Defendant John C. Herklotz, attached as Exhibit “7” (all of which have been previously filed of record in support of WRS’s Motion for Summary Judgment as to liability), Plaza Entertainment, Inc and Herklotz agreed to pay WRS’s attorneys fees.

12. Plaintiff has attached to its Motion for Summary Judgment the Affidavit of Thomas E. Reilly who has represented WRS throughout this litigation delineating the time spent and the hourly rate charged WRS by Thomas E. Reilly, P.C. through the preparation and filing of this Motion for Summary Judgment, and showing counsel fees accrued in the amount of $86,748.00. The total in the Affidavit of Thomas E. Reilly is the sum of $86,748.00 and differs from the amount referred to in the Napor Affidavit because the Thomas E. Reilly Affidavit was revised following the making of the Napor affidavit to remove from the calculations court costs and expenses that were initially included in the total reviewed by Jack Napor in advance of his affidavit. The sum of $86,748.00 is incorporated into the calculations this Concise Statement.

13. Under the Terms & Conditions, Exhibit "4" to the Napor Affidavit, Plaza Entertainment, Inc. agreed to pay storage charges for film materials left with WRS. As evidenced by the Invoice attached as Exhibit "3" to the Napor Affidavit and the Napor Affidavit from August 1, 2001 until May 31, 2006 Plaza Entertainment, Inc. stored 65 pallets of material with WRS for a monthly storage charge of $650. The total storage charges for the period were $38,850 with interest as provided in Exhibit"3" in the sum of $12,080.25.

14. Pursuant to the Service Agreement, WRS was entitled to a minimum monthly payment of $5,000.00 from November of 1998 to December 31, 2000 for a period of 25 months for a total of $125,000.00.

15. That the total amount owed exclusive of interest as of the date of this affidavit is the sum of $1,205,827.84.

16. The total amount due and owing to WRS as of October 13, 2006, based upon the business records of WRS including attorney's fees as calculated in the Napor Affidavit, is the sum of shown on the is $2,527,029.03 plus additional interest on the sum of $1,205,827.84 at the rate of 1.5% per month from October 13, 2006 and additional Attorneys fees for enforcement of an judgment.

Respectfully submitted,

THOMAS E. REILLY, P.C.

BY: /s/ Thomas E. Reilly

Thomas E. Reilly, Esquire
Firm I.D. #511
2025 Greentree Road
Pittsburgh, PA 15220
(412) 341-1600

CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of the Planitiff's Concise Statement of Material Facts in Support of Plaintiff's Motion for Summary Judgment as to Damages against Defendant, John Herklotz, was delivered via first-class mail, postage pre-paid on the __13th___ day of October, 2006 to the following:

Eric Parkinson, individually and
As President of Plaza Entertainment, Inc.
4929 Wilshire Boulevard
Suite 830
Los Angeles, CA 90010

John W. Gibson, Esquire
Greenfield Court
1035 Fifth Avenue
Pittsburgh, PA 15219

John P. Sieminski, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

THOMAS E. REILLY, P.C.

BY: ______/s/ Thomas E. Reilly__
Thomas E. Reilly, Esquire
Attorney for Plaintiff, WRS, Inc.